IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5332 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SHAPOORJI PALLONJI & CO LTD

Versus

REGIONAL PROVIDENT FUND

Appearance:

None present for Petitioner

MR JD AJMERA for Respondent No. 1

MR DM THAKKAR for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/09/97

ORAL JUDGMENT

#. The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of the petitioner.

#. The Special Civil Application has been placed on the

Board alongwith Civil Application No.7323 of 1997. The learned counsel for the respondent submitted that the Special Civil Application is premature and is not maintainable and as such, the matter was taken up for final hearing.

#. The facts of the case are that the petitioner, by this Special Civil Application challenges the order passed by the Regional Provident Fund Commissioner, Ahmedabad, dated 16.12.93, whereby it has held that the second enquiry against the petitioner under section 7-A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the `Act 1952') to determine the dues payable to respondent No.2 herein is maintainable. Under the order dated 26th March 1984, the Commissioner aforesaid has decided that the petitioner-establishment is covered under the provisions of the Act 1952 from October 1980. The respondent No.2 filed Special Civil Application No.4956 of 1990 before this Court alleging that even though he was in the services of the petitioner since 1952, the benefits of the Act, 1952, were not extended to him. That petition was admitted by this Court on 1.12.92. The respondent, Regional Provident Fund Commissioner called upon the petitioner under its Notice dated 25th May 1993, for an enquiry under section 7-A of the Act 1952. Against that Notice, the petitioner had approached this Court by way of Special Civil Application No.9224 of 1993 challenging the initiation of enquiry under section 7-A of the Act 1952 on the ground that the Act 1952 does not contemplate second enquiry as an enquiry had already been held in 1984. This Special Civil Application came to be decided by this Court on 24th September 1993. This Court issued direction to the Regional Provident Fund Commissioner to decide as to maintainability of enquiry as preliminary issue. Under the impugned order, the Regional Provident Fund Commissioner decided the issue of maintainability of enquiry under section 7-A of the Act, 1952 and held that enquiry is maintainable against the petitioner and hence this Special Civil Application.

#. The final order has not been passed in the proceedings under section 7-A of the Act, 1952, which have been initiated by respondent No.1 vide its Notice dated 27th May 1993. Under the impugned order, the respondent No.1 has only decided that enquiry under section 7-A of the Act, 1952 is maintainable. So it is only an interlocutory order which has been passed. The Act, 1952 is a benevolent Act and as such it is the duty of the petitioner to see that its employees get the benefit of this Act to the extent to which they are

really entitled. It is true that earlier under the order dated 26th March 1984, the establishment was held to be covered under the Act, 1952 from October 1980, but still in case the respondent No.2, who is the real beneficiary of the Act, 1952, complains that the establishment should have been covered earlier to the aforesaid date, the enquiry has to be started and rightly it has been initiated vide Notice dated 27th May 1993. The petitioner was only given a Notice and the authorities also held that enquiry is maintainable. Looking to the underlying objects and purpose of the Act, 1952, and the fact that the authority has decided in compliance of the order of this Court that enquiry is maintainable, the petitioner, instead of approaching this Court by filing this Special Civil Application, should have submitted all of his defence before the respondent No.1. Only a show cause Notice was given to the petitioner and the petitioner had all liberty to take all the defence available to it before the respondent No.1. It is not permissible to the petitioner to stall the proceedings by challenging the interlocutory order of respondent No.1 under which it has only held that enquiry under section 7-A is maintainable. In fact, by this order, no prejudice has been caused to the petitioner. Normally, a petition under Articles 226 of 227 of the Constitution of India should have been only against the final adjudication of the matters. Under the order dated 16th December 1993, the respondent No.1 has not adjudicated anything on the rights of the either of the parties. It was only at a stage of show cause Notice under section 7-A of the Act, 1952. In the case of Executive Engineer, Bihar State Housing Board v. Ramesh Kumar and Ors., reported in 1996 (1) SCC 327, the Apex Court held that without showing cause against the Notice, the 1st respondent thereon straightway filed the petition in the High Court and assailed the notice and eviction proceedings. There was no attack against the vires of statutory provisions governing the matter and in this case also, the petitioner has not attacked the vires of any of the provisions of the Act, 1952. Similar to that case, in this case also no question of infringement of any fundamental right guaranteed by the Constitution of India was alleged. In those facts their Lordships of the Hon'ble Supreme Court in the aforesaid case stated that it cannot be said that the Notice was ex facie a `nullity' or totally "without jurisdiction" in the traditional sense of that expression --- that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, was totally unauthorized. In such case, for entertaining a writ petition under Article 226 against a show cause

notice, at this stage, it should be shown that the authority had no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objetion regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in the appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India. Reference may have to another decision of the Hon'ble Supreme Court in the case of Shakti, through its Director v. R.K.Ragala & Ors., reported in 1996(7) SCC 166. In this case, the show cause Notice is only issued to the petitioner and its grievance is that the matter has been decided earlier and as such, no such Notice should have been issued. The case of respondent on the other hand is that correct material was not produced before the authority and as such the date of coverage of the petitioner under the provisions of the Act 1952 was not correctly decided. The respondent No.2 is really a person who may or may not have some benefit and it is not the case of the petitioner that the order passed earlier has been passed after hearing the respondent-workman or all other workers or their Union. However, as the matter has come up at this stage against only interlocutory order, I do not consider it to be appropriate to go on the correctness of the order impugned, but having taking into consideration all these facts on record, atleast at this stage, it is difficult to say that the matter can be taken to be of the category that even the authority was not having the jurisdiction to initiate the proceedings. As held by the Apex Court in the aforesaid two cases, in such matters, this Court should not interfere at this stage and that the petitioner should produce all of its defence there and in case ultimately final order goes against it, and if this point is of any worth and substance, it can raise same by challenging the final order. In such matters, dealing with the benevolent provisions for the workmen, the petitioner should not be permitted to stall the proceedings of final adjudication of the applicability of the Act, 1952 to the its establishment by challenging the interlocutory order or the the order passed on preliminary issue. Such a course is not permitted by their Lordships of the Hon'ble Supreme Court and reference in this respect may have to the decision in the case of The Cooper Engineering Ltd. v. P.P. Mundhe, reported in AIR 1975 SC 1900. Though that was the case of industrial dispute, but the principle laid down therein equally can be put in

application to this case. I cannot do better than to reproduce here the relevant portion of decision of the Hon'ble Supreme Court in the aforesaid case, Para 22 thereof reads as under:

"We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceedings to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

#. Taking into consideration the facts and circumstances of the present case, I find sufficient merits in the contention of the learned counsel for the respondent that this Special Civil Application is premature. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. However, dismissal of this Special Civil Application will not come in the way of petitioner to challenge the impugned order while challenging the ultimate final decision given by the Regional Provident Fund Commissioner in the proceedings initiated under section 7-A of the Act 1952, if the final order is passed against it.

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(sunil)